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1942

K File No. 0- Foreigners/42

Lgl DEPARTMENT

A BRANCH

Subject:— opinions under the Indian Foreigners Act 1864

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MRP.
1/5/56.

SWL/1415

Submitted.

2. Please see the letter from the Commr. of Police, Bombay at pp.1-2 ante. The questions for consideration of the R.L.A. are as follows:-

(1) Whether a deportee who, having returned to British India in contravention of the deportation orders served on him under the provisions of the Foreigners Act, 1864, and who having been involved in a cognizable offence, is allowed bail by the Magistrate in connection with his trial for that offence, can be apprehended and detained by the Commr. of Police under sec.4 of the said Act.

(2) If such a deportee is already apprehended and detained under sec.4 and in the meanwhile the Magistrate passes an order releasing him on bail, would this latter order override the action taken under sec.4; and

(3) whether there is any objection to such a deportee who is apprehended under sec.4, being remanded to Police custody pending investigation of the criminal offfence.

3. Question No.(1).- The answer to the first question is in the affirmative. If a deportee who having returned to British India in contravention of the deportation orders served on him, is released on bail by a Magistrate pending investigation of the criminal case launched against him, then there would be no objection to such a person being apprehended and detained under sec.4 of the Foreigners Act, 1864. Although there is no specific mention of the authority entitled to apprehend the foreigners referred to in sec.4, as in the case of sections 14 and 20, it

appears that such orders are being issued by the Commr. of Police and not by the Provl. Govt. (See office note dated 22-11-41 at p.9 of Foreigners/41). Under sec.3A such orders are issued by the Commr. of Police within the limits of a Presidency-town and this section precedes section 4 under which also presumably he is empowered to carry out these duties. The Commr. of Police can, therefore, apprehend and detain such a deportee in safe custody until the Provl. Govt. passes an order under sec.4 (Please see Govt. of India H.D.(Pol) Notfn. No.51/12/36, dated 29-3-1938 under which functions of the Central Govt. under sections 3, 3A and 4 have been entrusted to the Provl. Govts.).

4. Question No.(2).- The second question for reconsideration of the R.L.A. is whether if a deportee who is apprehended and detained by the Commr. of Police under sec.4 of the Foreigners Act, 1864 is ordered to be released on bail by the Magistrate in connection with his trial for the cognizable offence, the order of the Magistrate granting bail would override the orders issued under sec.4. The reply to this question is in the negative. Attention in this connection is invited to R.L.A's recent opinion No.6223,dated 17-7-41. In view of this opinion it appears that the order of the Magistrate granting bail in a pending criminal case would be ineffective since continued detention of the deportee is contemplated under sec.4 until a conditional or unconditional order of discharge is made by the Provl.Govt The Magistrate's order granting him bail cannot therefore override orders issued by the Commr. of Police

MRP.
1/5/56.

Office of the R.L.A.

The proceedings under section 4 of the Foreigners Act, 1864, are entirely different from those in respect of cognizable offences under the Criminal Procedure Code. The grant of bail by a court of Magistrate to a deportee in respec of any cognizable offence would not preclude such deportee's apprehension under section 4 of the Foreigners Act, nor would the grant of such bail in any sense over-ride or modify the effect of any action already taken against him in exercise of the statutory power conferred by section 4 of the Foreigners Act. For the purposes of Police Rules "detention" means detention in Police custody, in a police lock-up or otherwise (see Sohoni's Criminal Procedure Code, 14th edition page 318). There would, therefore, be no objection to remanding a deportee apprehended under section 4 of the Foreigners Act to police custody pending the investigation of any cognizable offence against him. The views expressed in P.& S.D. office note are correct.

Sd.P. N. Moos,
17/2.
Remembrancer of Legal Affairs.

U.R.to P.& S.D.,No.148C, dated the 18th February 1942.

MRP.
1/5/56.

Office of the R.L.A.

The G.R. which is referred to the R.L.A. for scrutiny purports to give instructions to the Commissioner of Police regarding the exercise by him of powers vested in him under paragraph 7 of the Foreigners Order, 1939, issued by the Central Government under the Foreigners Ordinance, 1939. The said paragraph 7 provides that if in the opinion of the civil authority, it is necessary for the public safety to do so, the civil authority may arrest any foreigner without warrant and detain him in such manner and at such place as may to such authority appear suitable. Paragraph 3 of the Order provides that the Central Government may appoint civil authorities for the purposes of this Order for such areas as it thinks fit. By Government Notification No.Pol.(W)21/84/39 dated 21st August 1939, the functions of the Central Government under the Foreigners Order, 1939, have been entrusted to the Provincial Governments with their consent. It is assumed in these papers, though the notification in that behalf is not forthcoming, that the Commissioner of Police, Bombay, has been appointed a civil authority for the Town and Island of Bombay under paragraph 3 abovesaid. Assuming that this is so, the Commissioner would be an authority exercising statutory power under paragraph 7 of the Foreigners Order, 1939. It would not be correct for Government to direct by executive Order in what circumstances and in what manner he should exercise that power. At any rate, such Order has no legal sanction and cannot have the effect of restricting or enlarging his power. It appears that Government's intention is to explain to the Commissioner of Police the provisions of paragraph 7 of the Foreigners Order, 1939, and to bring to his notice that its provisions can be resorted to for securing detention in custody of foreign nationals convicted by their consular authority for the period of the sentence inflicted on them. This can more appropriately be done informally or by a d.o. letter.

Sd. P.N.Moos,
14/4
Remembrancer of Legal Affairs.

U.O.to H.D.,No.3247, dated the 15th day of April 1942.

MRP.
1/5/56.

Government of India.
Home Department.

Notification. Political (U).Simla,the 31st August 1939.

No.31/34/39.- It is hereby notified for general information that the functions of the Central Government under the Foreigners Order, 1939, have been entrusted under sub-section (1) of section 124 of the Government of India Act, 1935 to the Provincial Governments, with their consent, subject to the condition that not withstanding this entrustment the Central Government may itself exercise any of the said functions in any particular case or classes of cases.

Sd. H.J.FRAMPTON.
Deputy Secretary to the Govt. of India.

HRP.
1/6/36.

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